

released to United States Immigration and Customs Enforcement (“ICE”) officials who had previously filed a detainer for Petitioner with the Dawson County, Nebraska, Sheriff’s Office. (*Id.*) Petitioner is not currently in the custody of Respondents.

II. ANALYSIS

Individuals seeking habeas corpus relief from the judgment of a state court must be “in custody.” 28 U.S.C. § 2254(b)(1). An individual satisfies the “in custody” requirement if he is incarcerated “at the time the petition was filed” and a petition for a writ of habeas corpus does not become moot simply because the petitioner fulfills his sentence. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). However, if a petitioner is released from custody while his habeas corpus petition is pending, the petition is moot unless “some concrete and continuing injury other than the now-ended incarceration . . . some ‘collateral consequence’” exists. *Id.* Such “collateral consequences” are required in order to satisfy the jurisdictional “case or controversy requirement” for federal judicial proceedings. *Id.* Stated another way, the petitioner “must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision,” or his petition is moot. *Id.*

Here, Petitioner was not convicted of any criminal charge. Although Gallardo filed his Petition while he was still in the custody of Respondents, he was subsequently released from their custody. (Filing No. 23 at CM/ECF pp. 2-3.) Therefore, unless Gallardo is subject to some collateral consequence of his conviction, his Petition is moot. Gallardo has not submitted any argument or evidence regarding collateral consequences and none are apparent in the record. In fact, Gallardo sought to be released from Respondents’ custody

to the custody of ICE for deportation to Mexico. Petitioner has received the exact relief he requested and the court can issue no decision against Respondents and in favor of Petitioner which would further the relief sought by Petitioner. The court finds that there is no continuing injury traceable to Respondents, and Gallardo's Petition is therefore dismissed.

IT IS THEREFORE ORDERED that:

1. Petitioner Jose L. Gallardo's Petition for Writ of Habeas Corpus (Filing No. 1) is denied in all respects and this action is dismissed with prejudice;
2. Petitioner's Motion for Default Judgment (Filing No. 20) is denied as moot; and
3. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 14th day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge